

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CENTER FOR BIOLOGICAL  
DIVERSITY, *et al.*,

Plaintiffs,

v.

NATIONAL MARINE FISHERIES  
SERVICE, *et al.*,

Federal Defendants,

and

PACIFIC COAST FEDERATION OF  
FISHERMEN'S ASSOCIATIONS, *et al.*,

Defendant-Intervenors.

Civil Action No. 2:19-cv-00487-MJP

**JOINT STATUS REPORT**

The National Marine Fisheries Service ("NMFS"), Regional Administrator for NMFS's West Coast Region, and the Secretary of the Department of Commerce (collectively "Federal Defendants"); the Center for Biological Diversity and Wild Fish Conservancy ("Plaintiffs"); and Pacific Coast Federation of Fishermen's Associations and Coastal Trollers Association

(“Defendant-Intervenors”)<sup>1</sup> (collectively the “Parties”) provide the following joint status report in accordance with the Court’s July 29, 2020 Order, Dkt. # 43. In that Order, the Court directed the Parties to report back to the Court as to the status of the litigation within two weeks of the Federal Defendants’ issuance of a new Biological Opinion under Section 7(a)(2) of the Endangered Species Act (“ESA”) on the effects of the Pacific Coast Salmon Fishery Management Plan (“Salmon Fishery Management Plan”) on the Southern Resident killer whale Distinct Population Segment (“Killer Whales”), 16 U.S.C. § 1536(a)(2). The Parties provide the following information and next steps for resolution of the case.

On March 3, 2019, Plaintiffs filed a complaint alleging that NMFS failed to reinitiate and complete consultation on the Salmon Fishery Management Plan and its effects on Killer Whales in violation of the ESA. Dkt. # 1. Plaintiffs’ request for relief sought, in large part, an order requiring NMFS to reinitiate and complete a new Biological Opinion on the Salmon Fishery Management Plan by a date certain. Dkt. # 1 at 20, ¶ 4-5.<sup>2</sup> On April 12, 2019, NMFS reinitiated consultation on the Salmon Fishery Management Plan and its effects on Killer Whales. *See* Dkt. # 24 at 2. As set forth in the First Declaration of Barry Thom, West Coast Regional Administrator for NMFS, NMFS committed to issuing a new Biological Opinion prior to May 1, 2020. Dkt. # 25, Thom Decl. ¶ 8. The Court granted Federal Defendants’ unopposed motion to stay the proceedings until issuance of the new Biological Opinion or May 1, 2020, whichever occurred sooner. Dkt. # 26.

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<sup>1</sup> Given the untimely death of counsel for Defendant-Intervenors Thane Tienson, counsel for Plaintiffs and Defendants contacted Glen Spain, General Legal Counsel and Northwest Regional Director of Defendant-Intervenor Pacific Coast Federation of Fishermen’s Associations, and Joel Kawahara, Vice-President and Director of Defendant-Intervenor Coastal Trollers Association, who affirmed that both organizations support this filing. They expect to have substitute counsel shortly.

<sup>2</sup> The citation format refers to the ECF-generated page numbers located in the upper right corner of the pleadings.

1 On April 29, 2020, Federal Defendants issued a Biological Opinion titled *Implementation*  
2 *of the Pacific Fishery Management Council Salmon Fishery Management Plan in 2020 for*  
3 *Southern Resident Killer Whales and their Current and Proposed Critical Habitat* (NMFS  
4 Consultation Number: WCRO-2019-04040) (“2020 Biological Opinion”). On June 5, 2020,  
5 Plaintiffs filed an amended complaint alleging violations of the Magnuson-Stevens Fishery  
6 Conservation and Management Act (“Magnuson-Stevens Act”), National Environmental Policy  
7 Act (“NEPA”), ESA, and Administrative Procedure Act, challenging the adequacy and  
8 responsiveness of the 2020 Biological Opinion, among other things. Dkt. # 31. On July 28, 2020,  
9 the Parties filed a Joint Motion for Stay of Proceedings to allow the Pacific Fishery Management  
10 Council to complete its ongoing work on Killer Whales and for NMFS to complete consultation  
11 on the Salmon Fishery Management Plan rather than on a single year’s management measures.  
12 Dkt. #41. As noted in the motion, the Council’s “preferred alternative could be an amendment to  
13 the Salmon Fishery Management Plan, a regulatory amendment, or continued management of the  
14 fishery under the current Salmon Fishery Management Plan.” *Id.* at 5 citing Second Thom  
15 Declaration. Dkt. 42 ¶ 10. The Court granted the motion. Dkt. #43.

16 At the November 2020 meeting of the Pacific Fishery Management Council, the Council  
17 approved Amendment 21 to the Salmon Fishery Management Plan. Amendment 21 requires the  
18 Council to take certain actions to benefit Southern Resident killer whales when authorizing  
19 fisheries in years of low Chinook salmon abundance. On April 21, 2021, Federal Defendants  
20 issued a Biological Opinion titled *Authorization of the West Coast Ocean Salmon Fisheries*  
21 *Through Approval of the Pacific Salmon Fishery Management Plan Including Amendment 21*  
22 *and Promulgation of Regulations Implementing the Plan for Southern Resident Killer Whales*  
23 *and their Current and Proposed Critical Habitat* (NMFS Consultation Number: WCRO-2019-  
24 04074) (“2021 Biological Opinion”). NMFS is now engaged in the process of completing its

1 review of Amendment 21 under the Magnuson-Stevens Act and other applicable law, including  
2 the NEPA. NMFS plans to publish a notice of availability of the Amendment and draft NEPA  
3 document within the next two months.

4 The Parties believe that resolution of this case is possible without further court  
5 intervention and are actively discussing next steps including the finalization of Amendment 21  
6 and the associated NEPA process. The Parties propose to file a joint status report with the Court  
7 by June 1, 2021. Should the Parties agree on an alternative for resolving this case before that  
8 date, we will promptly alert the Court or file a motion.

9 Respectfully submitted this 5th day of May 2021,

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11 By: s/ Julie Teel Simmonds

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**CERTIFICATE OF SERVICE**

I certify that the foregoing will be electronically filed with the Court's electronic filing system, which will generate automatic service upon on all Parties enrolled to receive such notice.

s/ Julie Teel Simmonds  
JULIE TEEL SIMMONDS